United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington Fish and Wildlife Office
510 Desmond Dr. SE, Suite 102
Lacey, Washington 98503

APR - 8 2011

In Reply Refer To:
13410-2011-CPA-0039

Colonel Anthony Wright
Seattle District, Corps of Engineers
ATTN: Regulatory Branch (Walker, Tong)
P.O. Box 3755
Seattle, Washington 98124-3755

Dear Colonel Wright:

Subject: Comments on Nationwide Permit General Regional Conditions and Specific Regional Conditions 2012, Washington

This letter represents the U.S. Fish and Wildlife Service's (Service) Washington State Office comments in response to the special public notice dated February 22, 2011, regarding proposed Seattle District, U.S. Army Corps of Engineers' (Corps') general regional conditions (GRCs) and specific regional conditions (SRC) for the nationwide permits (NWPs) to be reissued in 2012. We appreciate the opportunity to work with your staff, Tina Tong, on the development of conditions for the Corps. Nancy Brennan-Dubbs, of my staff, has discussed most of the following comments and concerns with Ms. Tong during interagency meetings.

We also recognize this as an opportunity for you, as a member of the Puget Sound Federal Caucus, to increase protection of the Puget Sound ecosystem. These protections would further the Puget Sound Partnership's goal of achieving the clean-up, restoration, and protection of Puget Sound by 2020. Although some of the GRCs and SRCs promote environmental improvement and protection of Puget Sound, additional conditions and restrictions to many NWPs are necessary to achieve protection and restoration of Puget Sound, as well as State of Washington resources.

The NWPs were developed to only authorize those activities that cause "only minimal adverse environmental effects when performed separately, and cause only minimal cumulative adverse effect on the aquatic environment" (76 FR 9174). The Service is concerned that many of the NWPs do not meet these conditions, as discussed in the comments that follow. In many cases

we have recommended that actions be submitted through the individual permit process rather than the NWP process or that specific resources be excluded from the NWP process. These recommendations reflect the Service's serious concern over the potentially significant environmental effects of the NWP program on listed and other fish and wildlife resources, as well as the reduced scrutiny these activities could receive by the Service due to the shortened timeline prescribed for NWPs.

The following comments and recommendations are designed to assist you in meeting the regulatory requirements of the NWP program by including sufficiently protective GRCs and SRCs.

PRIMARY ISSUES

1. **Bank stabilization in the nearshore waters of Puget Sound, fish-bearing streams throughout the State, and designated critical habitat for aquatic resources, including bull trout (*Salvelinus confluentus*)**

   The Service is very concerned with the use of NWPs (including NWP 3, 5, 6, 7, 12, 13, 14, 18, 29, 39, 40, 42, 43, 44, A, and B) to permit bank stabilization within Puget Sound nearshore, streams, and designated critical habitat for aquatic resources. Many of the waterbodies in Washington provide habitat for federally listed species, including bull trout and the marbled murrelet (*Brachyramphus marmoratus*). In addition to these species, these waterbodies also support the prey base that these species depend on for food.

   Bank stabilization prevents the natural processes that form and maintain functioning riparian habitat along stream corridors and can, cumulatively, impair the recovery of listed salmonids. New and replaced bank stabilization degrades instream habitat conditions for salmonids and aquatic organisms, and limits or precludes the formation of natural river features, such as side-channels and other complex stream habitat that are important as refugia for these salmonids during high flows. Bank stabilization materials such as riprap or other impervious materials can preclude the establishment of natural streamside vegetation which is important to streambank integrity and healthy fish habitat (Schmetterling et al. 2001, p. 7; Bjornn and Reiser 1991, p. 135) and prevents the recruitment and retention of large wood (Schmetterling et al. 2001, p. 7).

   Riparian vegetation links terrestrial and aquatic ecosystems, influences channel processes, contributes organic debris to streams, stabilizes banks, and modifies water temperatures (Gregory et al. 1991, pp. 547-548). Use of rock for streambank stabilization without hardwood or conifer trees will delay or even preclude the natural establishment of larger riparian vegetation in the action areas. The sustained loss of large woody debris from reduced recruitment reduces the structural component of instream habitat that creates pools, refugia, and cover from predators. Large wood also enhances invertebrate production and abundance due to the complex range of habitats available for colonization and the retention of fine organic debris (Gurnell et al. 2002, p.603).

Although large rock, such as riprap, can provide some habitat features used by bull trout, fish densities at rocked banks are low compared to natural banks (Schmetterling et al. 2001, p. 6; Peters et al. 1998, p. 26). Peters et al. (1998, p. 26) found that salmon densities are usually lower at stabilized banks than natural banks with the exception of those bank stabilization projects that used only large woody material. The natural complexity of wood (i.e., root wad vs. single log) is also correlated with juvenile fish abundance, as abundance is greater in root wad cover than in single logs (Beamer and Henderson 1998, p. 13). The lack of habitat complexity associated with bulkheads, riprap or other hardened features, is expected to reduce abundance and use of these areas by salmonids.

In the marine environment, forage fish spawning habitat may be degraded or lost due to the actual footprint of the bank stabilization or indirectly due to the loss of feeder bluffs that provide the source of spawning gravels for species such as surf smelt (*Hypomesus pretiosus*) and sand lance (*Ammodytes hexapterus*). Changes in beach topography may also result in the loss of eelgrass beds and macroalgae, which are important spawning habitat for Pacific herring (*Clupea pallasi*) and food and nursery areas for other fish species. Furthermore, bank stabilization may result in the loss of nearshore riparian vegetation. Marine areas with intact riparian zones have high species diversity and abundance (Brennan and Culverwell 2004, p. 4). Removing this vegetation can desiccate intertidal communities. For example, high mortality of surf smelt eggs has occurred on beaches with little shading (Pentilla 2001 cited in Brennan and Culverwell 2004, p. 12).

In summary, the construction of new and continued maintenance of existing hardened banks that include limited or no habitat features for aquatic and terrestrial species is likely to impair the recovery of federally listed fish within the Puget Sound ecosystem and statewide waters. It is the Service's position that bank stabilization causes more than minimal individual and cumulative adverse environmental effects on the aquatic environment. We also do not concur that a Finding of No Significant Impact (FONSI) is an appropriate determination under the National Environmental Policy Act (NEPA) for those NWPs that permit new bank stabilization.

We therefore recommend the following general regional condition:

- NWPs cannot be utilized for **any new** shoreline and bank stabilization activities in the Puget Sound nearshore, fish-bearing streams, or designated critical habitat aquatic resources.

Should the Corps reissue this NWP as proposed, a site and stream reach and/or watershed analysis should be required to determine the causes of bank instability/erosion, stabilization and the effects which would result, both upstream and downstream of bank hardening at the site. This analysis must be performed by an entity qualified to evaluate both physical and biological changes to the stream bed and bank due to bank hardening. Additionally, we recommend that all individual permits include this information. Finally, new bank stabilization activities proposed in marine waters should require the submittal of a geotechnical analysis and an evaluation of the expected effects on nearshore drift, spawning habitat, and aquatic vegetation.

We further recommend that maintenance of existing bank stabilization structures be required to incorporate large wood and/or other habitat features to qualify for a NWP. If no such features are feasible or practicable due to site-specific conditions, the applicant should be required to mitigate for the effects associated with the continued degradation of habitat. This mitigation should replace the functions affected and follow the compensatory mitigation sequencing as stated in "Compensatory Mitigation for Losses of Aquatic Resources; Final Rule" (40 CFR Part 230). We also recommend that no more than an average of 1 cy per running foot be placed along the bank below the plane of the ordinary high water mark or the high tide line unless rock or concrete composes less than 75 percent of the material used. The remainder of the material may consist of large woody material, coir logs and mats, willow wattles, and other living or biodegradable materials. This recommendation would provide some habitat value for fish and wildlife species, as well as the desired bank stabilization.

Additionally, if the Corps does not preclude the use of NWPs for any new bank stabilization actions in the Puget Sound nearshore, streams, and critical habitat, we request that the Corps develop, with assistance from the Service, criteria for determining the extent of new bank stabilization that would comply with the requirements of the NWP (e.g., cause only minimal adverse environmental effects when performed separately, and cause only minimal cumulative adverse effect on the aquatic environment).

2. **Stormwater and wastewater discharges into Puget Sound nearshore, fish-bearing streams, and designated critical habitat for aquatic resources, including bull trout** (including NWP 3, 7, 12, 23, and 43).

While contamination by a number of toxics, such as lead, polychlorinated biphenyls (PCBs), and dioxins, has been reduced by use restrictions, other chemicals continue to be used and many enter into Puget Sound through stormwater runoff, wastewater discharges, and nonpoint sources. Although new stormwater and wastewater discharges must meet state water quality standards prior to discharges into waters of the United States, these discharges contain regulated and unregulated contaminants that may harm aquatic species as they become part of the food chain. Additionally, the flows themselves may alter the physical and chemical condition of the site such that aquatic resources, including eelgrass and forage fish, are impacted due to changes in the saltwater concentration or erosive forces.

Due to the importance of these aquatic resources, we recommend the following general regional condition.

> No new outfalls are permitted to discharge into fish spawning habitat or that negatively affect special aquatic sites (e.g., eelgrass beds, kelp beds).

Should the Corps reissue this NWP contrary to the Service's recommendation, the Corps should consider requiring a Pre-Construction Notification (PCN) be submitted for actions that affect these resources. The PCN should include information on the location of

eelgrass, kelp, forage fish spawning habitat in vicinity of outfall and the potential effects to these resources due to the proposed action.

3. **Fill within Perennial, Ephemeral, and Intermittent Streams** (including NWP 3, 5, 6, 7, 12, 13, 14, 18, 29, 39, 40, 42, 43, 44, A, and B)

The Service is concerned with the loss of streams due to fill associated with the issuance of NWPs for up to 300 linear ft of perennial stream bed and potentially more than 300 linear ft for intermittent and ephemeral stream beds if the district engineer waives the 300 linear ft limit by making a written determination concluding that the discharge will result in a minimal adverse effect. Although the Service supports the Corps' proposal to limit the fill within intermittent and ephemeral stream beds to no more than 300 linear ft, we are concerned with the individual and cumulative effects of these actions.

As discussed above, many of our streams, primarily perennial, provide habitat for listed salmonids and are also designated as critical habitat for these species. The filling of these areas impedes the recovery of these species. Intermittent and ephemeral streams also provide habitat for fish as well as amphibians. Intermittent streams may be important nursery areas for amphibians as they support fewer predators than perennial streams. Young salamanders may rear in intermittent streams before moving downstream when they are larger and more able to protect themselves (H. Welsh, USDA Forest Service Pacific Southwest Research Station, unpublished data cited in Reid and Ziemer *in litt.* 1994). Intermittent streams may also form a high proportion of channel systems in some areas, contributing nutrients to downstream reaches from primary production and plant litter (Reid and Ziemer *in litt.* 1994). They infiltrate water, which prolongs groundwater releases downstream and help to control flood flows. They are also important in trapping pollutants and allowing for their breakdown by soil organisms.

Due to the importance of these stream resources, we recommend the following general regional condition.

> No fill is permitted within streams, unless such fill can be demonstrated to result in an overall benefit to the aquatic system (e.g., replacement of an undersized culvert with a larger culvert or bridge). All actions that propose fill within a stream would require a PCN. The PCN must include information to demonstrate that it will result in a benefit to the aquatic system.

Should the Corps reissue this NWP contrary to the Service's recommendation, the Corps should require that no fill be permitted within fish-bearing perennial streams, and the loss of intermittent and ephemeral streams is limited to 300 linear ft. Additionally, if the Corps proposes to maintain the ability to issue a waiver for fills exceeding 300 linear ft in intermittent and ephemeral streams, we encourage the Corps to not delegate this authority below the Colonel or his/her acting. Currently, waivers have been delegated to the Project Manager, which does not provide sufficient rigor for review of these fill exceedances.

4. **Fill within spawning habitat (native salmonids and native forage fish)** (including NWP 3, 7, 13, 36, 43)

The Nationwide General Conditions currently do not authorize activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an **important spawning area**. "Important spawning areas" is not defined, thereby allowing impacts in spawning areas which are important for providing recruitment of fish into the ecosystem. The Seattle District proposes to define important spawning areas as documented spawning habitat for Chinook, steelhead, bull trout, herring, sand lance, and surf smelt. Although we support this definition, we request that important spawning area be defined to include additional forage fish species, species of concern in Washington State, and currently undocumented, but identified suitable spawning habitat. Due to the competitive and negative impacts associated with non-native fish species, our focus is to protect the spawning habitat of our native fish. Therefore, we recommend the following definition for important spawning area:

> Documented and potential spawning habitat for all salmonids native to Washington State, Pacific eulachon/smelt *(Thaleichthys pacificus)*, Pacific lamprey *(Entosphenus tridentatus)*, Pacific herring, sand lance, and surf smelt. Documented and potential spawning habitat information can be obtained from the StreamNet database (see http://www.streamnet.org) *or the SalmonScape database (see http://wdfw.wa.gov/mapping/salmonscape/index.html)* and other sources

Should the Corps not incorporate this proposed definition contrary to the Service's recommendation, the Corps should consider requiring a PCN for all fills within native fish spawning habitat and long-term mitigation for any permitted impacts to these areas. Currently, mitigation for impacts to spawning habitat for marine forage fish typically requires the placement of spawning materials in the nearshore for a limited time period (often 1 to 5 years). This does not adequately replace the lost function of the site nor is it protective of the Puget Sound ecosystem and its recovery.

GENERAL COMMENT

All actions that include the excavation or dredging of marine and/or freshwater substrates should be evaluated for contaminants and be evaluated for the need for further testing for compliance with the Dredged Materials Management Plan requirements. Such testing will reduce the likelihood of further contamination of our aquatic systems and the potential exposure of aquatic organisms, including listed fish and their prey resources.

SPECIFIC COMMENTS

The following are our specific comments on individual NWPs. Please note that the comments provided previously under "Primary Issues" and "General Comment" apply to the following NWPs, as applicable.

NWP 3 – Maintenance

NWP 3 is one of the most frequently used NWPs within Washington. Over 265 permits were issued on average per year for a variety of maintenance activities based on the previous 3 years of Corps permit data. Due to the large number of actions permitted under this NWP, it has the potential to cumulatively result in significant adverse effects to the aquatic environment. To prevent and/or minimize these effects to Puget Sound nearshore, streams, and critical habitat for aquatic resources, the Service recommends the following conditions for this NWP.

1. Maintenance of structures in Puget Sound nearshore, streams, and designated critical habitat for aquatic resources are not authorized if fill extends beyond the prior footprint of the structure, unless habitat enhancements are incorporated into the structure and compensatory mitigation is provided for the affected environment. The extension may not exceed 5 percent of the existing structure or 25 ft, whichever is less. For example, replacement of a vertical bulkhead with riprap would result in some improvement to environment due to additional structure provided by the rock, but would continue to degrade the habitat and require compensatory mitigation.

2. Structures modified to extend beyond their prior footprint require a PCN.

Should the Corps reissue this NWP contrary to the Service's recommendation, the Corps should consider applying a maximum extent to the extension of the repair of an existing structure.

NWP 5 - Scientific Measurement Devices

No acreage limitation is provided for this NWP, only a quantity (25 cy). Please require a limit of 0.10 acre. This would be consistent with NWP 18 (Minor Discharges).

NWP 6 - Survey Activities

The NWP was modified to remove the quantity limitation (25 cy) and include a limit based on area (0.10 acre) only. We recommend that both limitations be included, as is recommended above for NWP 5 and currently a condition of NWP 18.

NWP 7 - Outfall Structures and Associated Intake Structures

See "Specific Issues - Stormwater and Wastewater Discharges."

NWP 10 – Mooring Buoys

Due to the importance of eelgrass and macroalgae, including kelp, to fish and wildlife, , please require the following:

1. An eelgrass and macroalgae survey is required for the area adjacent to and affected by the mooring buoy and boat(s) to be attached to the buoy.

2. NWP 10 cannot be used if the action results in direct and indirect impacts to eelgrass and attached macroalgae.

Should the Corps reissue this NWP contrary to the Service's recommendation, the Corps should requiring that all vessels attached to buoys be precluded from grounding and compensatory mitigation be required for any effects to eelgrass and attached macroalgae.

NWP 13 - Bank Stabilization

Please see "Specific Issues - Bank Stabilization" provided above.

This NWP has been modified to allow for the placement of more than 1 cy per running foot below the plane of the ordinary high water mark or high tide line if the permittee utilizes bioengineering techniques to accomplish the bank stabilization. We concur with the use of "softer" bank hardening methods when bank stabilization is determined to be necessary and no other options are available; however, we recommend the following modifications and comments.

1. Provide a definition for bioengineering techniques. Although some bioengineering techniques use rock to hold large wood in place, it should be the wood, rather than the rock that provides the primary bank stabilization function.

2. If more than 1 cy of material is needed per running foot, this excess should be to accommodate the use of large wood, not rock or other hard bank protection.

3. A PCN for actions resulting in more than 1 cy of material per running foot should still be required. They are currently deleted as a requirement. This is recommended to allow Corps Project Managers the opportunity to ensure that the design of the bank stabilization meets the requirements of the NWP, especially with regard to the use of bioengineering and allowance of more than 1 cy of material per running foot.

NWP 18: Minor Discharges

Due to the importance of streams, special aquatic sites in Puget Sound nearshore, and critical habitat for aquatic resources, please require the following condition:

> All activities within streams and special aquatic sites in Puget Sound nearshore, except for placement of fish spawning substrate require an individual permit.

NWP 20: Response Operations for Oil and Hazardous Substances

NWP 20 has been expanded to include temporary structures and fills within waters of the United States for spill response training exercises. Although we understand the importance of providing training for such events, we do not concur that such exercises should require the placement of fill or structures within waters of the United States, especially special aquatic sites. We therefore recommend the following condition:

All training activities proposed in waters of the United States require an individual permit.

Should the Corps reissue this NWP contrary to the Service's recommendation, the Corps should consider prohibit training activities in special aquatic sites, designated critical habitat for aquatic resources, streams, and spawning habitat. The Corps should also consider limiting such fill and structures to no more than 0.10 acre of waters of the United States and no more than 300 ft in ephemeral and intermittent streams. We also recommend prohibiting fill within perennial fish-bearing streams.

NWP 23: Authorized Categorical Exclusions

Previously authorized categorical exclusions have exceeded the acreage or linear ft limitations required for the issuance of other NWPs. Although these actions may include mitigation as part of their proposal, they are not held to the same criteria or standards as other actions, and may cause more than minimal individual and cumulative adverse environmental effects on the aquatic environment. Due to the importance of streams, Puget Sound nearshore, and critical habitat for aquatic resources, please require the following:

Prohibit all activities within critical habitat for aquatic resources, streams, and in Puget Sound nearshore, unless the proposed would otherwise comply with another existing NWP.

Should the Corps reissue this NWP contrary to the Service's recommendation, the Corps should require that the discharge may not cause the loss of more than 0.5 acre of non-tidal waters of the United States, including the loss of more than 300 linear ft of stream bed. This condition would be consistent with other national and/or regional conditions proposed or currently in use.

NWP 29- Residential Developments

To protect streams and critical habitat for aquatic resources, please require the following condition:

No activity can result in fill within a fish-bearing stream or designated critical habitat for aquatic resources.

Should the Corps reissue this NWP contrary to the Service's recommendation, the Corps should then require that this activity cannot result in the loss of a fish-bearing perennial stream.

NWP 31: Maintenance of Existing Flood Control Facilities:

NWP 31 has been modified to allow for the removal of vegetation from levees. Riparian vegetation is important to both fish and wildlife due to the habitat it provides. We provided information under "Specific Issues - Bank Stabilization" above regarding the importance of

riparian habitat, and refer the reader to that section. We therefore object to this proposed modification and request the following condition:

> Removal of native vegetation on levees is not permitted. Mitigation is required for the removal of non-native vegetation.

Should the Corps reissue this NWP contrary to the Service's recommendation, the Corps should require that the applicant must follow the protocols described in Information Paper – PL 84-99 Levee Vegetation Management, February 28, 1995, or most recently approved levee vegetation variance management guidance for the Seattle District.

NWP 36 - Boat Ramps

We are concerned with the issuance of this NWP as it would allow the construction of a boat ramp within spawning habitat. Please see "Specific Issues - Fill With-in Spawning Habitat."

Should the Corps reissue this NWP contrary to the Service's recommendation, the Corps should require a PCN for boat ramps located on or adjacent to (within 25 ft) of document or potential surf smelt, Pacific herring, sand lance, candlefish, or salmon spawning habitat, or if submerged aquatic vegetation or riparian vegetation will be removed or disturbed.

NWP 40 - Agricultural Activities

See "Specific Issues - Fill within Perennial, Ephemeral, and Intermittent Streams."

NWP 48: Existing Commercial Shellfish Aquaculture Activities

NWP 48 has been modified to include the expansion of existing commercial shellfish aquaculture operations. As proposed, we recommend that expansion of shellfish aquaculture operations not be included as part of this NWP, because this likely would result in more than minimal individual and cumulative adverse environmental effects on the aquatic environment. We specifically describe the effects to bull trout, bull trout critical habitat, and marbled murrelets form existing operations in our 2009 Biological Opinion on NWP 48 in the State of Washington (FWS Ref. # 13410-F-2008-0461) due to NWP 48.

Our understanding of the proposed NWP 48 modification is that existing commercial shellfish aquaculture operations would be allowed to expand their operations within a waterbody if they are currently operational in that waterbody. There is currently no acreage limit for expansion or types of existing habitat that could be converted to shellfish aquaculture. We anticipate that the broad definition of waterbody under NWP would result in the majority of proposed shellfish operations to fall under the NWP 48.

This proposal would result in significant impacts to eelgrass, which would affect a variety of fish and wildlife resources. Eelgrass (*Zostera* spp.) and other submerged aquatic vegetation provide important food, cover, and breeding areas for a variety of fish and wildlife species. For example, Brant geese (*Branta bernicla*) forage primarily on eelgrass and it provides spawning and nursery

areas for Pacific herring (*Clupea pallassi*). Herring and other forage fish are primary prey species for several listed salmonids and the listed marbled murrelet. Eelgrass also provides cover for juvenile salmonids that are federally listed. Additionally, micro-invertebrates associated with eelgrass beds, which include harpacticoid copepods, gammarid amphipods, and cumaceans, are commonly reported to be important components in the diets of juvenile Pacific salmonids, herring, smelts and flatfishes (Naiman and Sibert 1979; Simestad et al. 1980, 1988; D'Amours 1987; Thom et al. 1989; Webb 1989; Simestad and Cordell 1992; and Wyllie-Echeverria et al. 1995, all as cited in Blackmon et al. 2006, p. 5). Although a PCN is required for all expansions, this does not provide the Service with sufficient time for adequate review of the proposed action.

Additionally, the revised NWP removes the reporting requirement for existing operations. These reports should continue to be required as they allow the Corps to determine whether proposed actions are resulting in more than minimal individual and cumulative adverse environmental effects on the aquatic environment. Neither do we agree that a FONSI is an appropriate NEPA finding for this NWP.

We also recommend that the Corps require the following to provide greater protections to birds and fish, and to assist in the identification of nets that become dislodged and become "ghost nets" resulting in fish and birds becoming entangled underwater and drowning.

1. Predator nets should preclude bird entanglement.
2. Nets shall be installed in such a manner to preclude fish from entering under the nets.
3. Nets will be tagged with the name, address, or other identification such that if the net is dislodged and later found, the owner of the net can be identified.

Additionally, the Corps proposes the following condition:

> The permittee must submit a pre-construction notification to the district engineer for any subsequent event if applying more than 10 cy of "frosting" (e.g., thin layer of gravel) in a special aquatic site (e.g., mudflats or vegetated shallows).

Although this condition provides some additional potential protection to aquatic resources in Puget Sound, the continued loss of eelgrass and macroalgae furthers the degradation, rather than recovery, of this ecosystem. Therefore, we recommend that any impacts to special aquatic sites, especially vegetated shallows, require an individual permit. However, we would be willing to work with the Corps in the development of regional conditions by which limited expansion of existing shellfish aquaculture operations could occur under the NWP 48.

NWP A - Land-Based Renewable Energy Generation Facilities

The Service recommends that this NWP be revoked in Washington due to the potential significant impacts to migratory birds, including the federally listed marbled murrelet, as well as other wildlife species. Although we understand the importance of implementing renewable energy facilities, we do not agree that a NWP is the appropriate permit method for these actions due to the severity of their potential impacts on wildlife. These actions may result in adverse

impacts that are individually and cumulatively significant due to the footprint of the entire facility, as the impacts are not limited to the footprint within waters of the United States. We also do not agree that a FONSI is an appropriated conclusion under the NEPA for this NWP.

Should the Corps issue this NWP contrary to the Service's recommendation, the Corps should require that the applicant's provide information regarding the placement of these facilities within bird and wildlife migration routes and areas identified as important breeding, wintering, foraging and roosting areas, and the potential effects to wildlife using these areas.

NWP B - Water-Based Renewable Energy Generation Pilot Projects

The Service recommends that the Corps revoke this proposed NWP as it may result in more than minimal individual and cumulative aquatic impacts, including potential impacts to migratory birds, such as the federally listed marbled murrelet. Although the NWP proposes to limit the number of generation units to ten, depending on the site this may result in changes to currents and other hydrologic and physical processes in our marine and freshwater systems that we currently do not understand due to the lack of studies on the operational effects of these units. We maintain that these actions should require an individual permit to allow for full public review and adequate time for the review. We also do not agree that a FONSI is an appropriated conclusion under the NEPA for this NWP.

Should the Corps issue this NWP contrary to the Service's recommendation, the Corps should require the following to minimize impacts to listed species and Puget Sound nearshore.

1. No activity may result in the loss of habitat within a fish bearing stream.
2. No activity may be placed within eelgrass, anchored macroalgae, or spawning habitat.
3. No activity may result in the loss of greater than 300 linear feet of intermittent and ephemeral stream beds

Thank you for the opportunity to provide comments on the proposed NWP Regional and General Conditions. Should you have any questions or comments regarding our response, please contact Nancy Brennan-Dubbs, of my staff, at (360) 753-5835 or Martha Jensen, of my staff, at (360) 753-9000.

Sincerely,

Ken Berg, Manager
Washington Fish and Wildlife Office

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